

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.704 of 2010
Cuttack this the 11th day of October, 2013

CORAM
HON'BLE SHRI A.K.PATNAIK, MEMBER(J)
HON'BLE SHRI R.C.MISRA, MEMBER(A)

1. P.V.SatyanandaRao,
Aged about 32 years
S/o. PrasudeRao

2. P.Anil Kumar,
Aged about 28 years
S/o.PrasadRao

3. A.ShankarRao
Aged about 29 years
S/o.Narayan Swamy

All are of Village-Mallampeta
Near Railway Colony
Dwarikanagar
Bobili
Bijayanagaram
Andhra Pradesh

...Applicants

By the Advocate(s)-M/s.K.Panigrahi, S.R.Debata

-VERSUS-

Union of India represented through

1. The General Manager
East Coast Railways
Rail Kunj,
Bhubaneswar
Dist-Khurda

2. The Divisional railway Manager
East Coast Railways
Waltair Division
Dist-Waltair
Andhra Pradesh

V. A. Deo

3. The Assistant Engineer
 East Coast Railways
 Rayagada
 PO/PS/Dist-Rayagada

...Respondents

By the Advocate(s)-Mr.T.Rath

ORDER

HON'BLE SHRI A.K.PATNAIK, MEMBER(AJ):

Applicants three in number having a common cause of action have approached this Tribunal in the instant O.A. seeking the following relief.

- i) Let the order dated 18.03.2010 vide Annexure-5 be quashed by modifying the select list vide Annexure-3 by incorporating the name of the Applicants as selected candidates along with others.
- ii) Let the Respondents be directed to give appointment to these present applicants pursuant to the Notification under Annexure-1 by declaring the reduction of number of posts from 100 to 80 in respect of Rayagada Division ^{as} is illegal.
- iii) Let the Respondents be directed to extend the benefit of judgment dated 24.09.2008 passed in W.P.(C) No.5053 of 2003 to the applicants by granting temporary status and other consequential benefits after providing appointment in their favour.
- iv) And any other appropriate order(s)/direction(s) may kindly be passed which would be deemed fit and proper in the facts and circumstances of the case.

2. Perusal of the records reveals that earlier the present applicants had approached this Tribunal in O.A.Nos.18, 19, 21 and 22 of 2010, which was disposed of through a common order dated 29.1.2010, with direction to Respondents to examine the claim of each of the applicants in the light of the decision rendered in the case of M.Rama Rao(supra) and communicate the outcome of such examination to each of the applicants within a

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stipulated period. Pursuant to the above direction of the Tribunal, the Respondents vide Annexure-A/5 dated 18.3.2010 communicated their decision to the applicants, which is impugned and called in question herein.

For the sake of clarity, order dated 18.3.2010 is extracted hereunder.

"Sub: O.A.No.21 of 2010 filed by Sri Tella Gopi,
S/o.Venkata Naidu & 7 others before Hon'ble
CAT/Cuttack

Ref: Hon'ble Tribunal's orders dated 29.1.2010

Pursuant to the Hon'ble Tribunal's order dt. 29.01.10, on the O.A.No.21/2010 filed by you and 7 others, your claim has been gone through carefully.

You had contended that 100 casual labour posts were allotted to Rayagada vide advertisement dated 30.05.1996 and that you had appeared at the selection for these posts and had a reasonable belief about your getting selected, but you were not given the offer of appointment as casual gangmen in the Rayagada railway sub-division.

It is true that the initial notification No.WPT/5/Engg/CI dt. 30.05.1996 was issued inviting application for engagement of 100 casual labours in the Rayagada subdivision of engineering department. Subsequently, the requirement was revised by the competent authority and the Rayagada subdivision was authorized to engage only 80 casual labour. The same was notified to all concerned vide no.wpt/5/Engg/CI dt. 26.6.96 well before the selection was held between 9-07-1996 and 21.07.1996. The selection was therefore held for only 80 posts of casual labour.

Based on the selection, a panel of 78 successful and eligible candidates was published vide memorandum No.WPT/5/Engg/CI dt. 13.08.09 and corrigendum dated 28.08.09. Subsequently, one more candidate bearing the name of Sri S.Srinivasa Rao, son of Sri Dandasi who had passed the test but was earlier considered not eligible due to overage, has been empanelled vide memorandum No.WPT/5/CI dt. 22.01.10 in obedience to the judgment dt. 21.10.09 of the Hon'ble CAT/Cuttack in O.A.No.487/09. The other candidate though had qualified in the selection could not be considered as he was not meeting the terms and conditions of the notification dt. 30.05.96. Therefore, the panel was published for a total of 79 candidates.

It is noted from the available physical test proceedings/records that out of 8 applicants including

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 you who had filed O.A.No.21 of 2010, three applicants bearing the names S/Sri P.V.Satyananda Rao, S/o.Prasad Rao, P.Anil Kumar, S/o.Prasad Rao and Shankar Rao, S/o.Narayan Swamy had appeared at the selection test held between 09.07.1996 and 21.07.1996, but did not come out successful".

3. It is the case of the applicants that once an advertisement was made with the condition to apply for only one Sub-Division, out of eight Sub-Divisions and after last date of submission of applications, if number of posts in respect of one Sub Division, i.e., Rayagada Sub Division is reduced from 100 to 80 without intimating the applicants and without giving them the liberty to apply in respect of any other Sub Division out of other seven Sub Divisions, then such action becomes prejudicial to the interest of the applicants. It has been further submitted that since the number of vacancy pursuant to the advertisement coincides with the number of selected candidates, in that event after the selection process could be started, if the number of vacancy is reduced, it amounts to violative^{on} of the principles of natural justice as well as Articles 14 and 16 of the Constitution. The applicants have submitted that since order dated 26.06.1996 whereby and whereunder 100 vacancies of casual laborers was reduced to 80 at the whims and fancies of the Respondents, this action ip so fact not only is arbitrary but also suffers violation of the principles of natural justice. Lastly, it has been submitted that by the above action of the Respondents the applicants have been deprived of applying in respect of other Sub Divisions where number of vacancies was more than 80. Hence the applicants have approached this Tribunal seeking relief as referred to above.

4. We have heard Shri K.Panigrahi, learned counsel for the applicants and Shri T.Rath, learned Standing Counsel appearing on behalf of the

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Respondent-Railways. In the light of the submissions made above, we have also examined the documents available on record. On being directed, Shri Rath has produced a letter dated 6.12.2010 which makes it conspicuous that the applicants did appear at the physical test held between 9.7.96 to 21.7.1996, but their names were not included in the select list of 80 candidates prepared by the Selection Committee since they were not found suitable in the physical test.

5. From the above recital of facts, the terms of reference in this Original Application whether the Respondent-Railways while advertising and inviting applications for filling up of 100 vacancies of casual labours are at fault in reducing and making the selection against 80 vacancies and whether while doing so, they ought to have complied with the principles of natural justice.

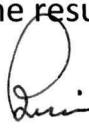
6. We have given our anxious considerations to the rival submissions. It is the case of the Respondents, as borne out from the record, that in the first instance Notification No.WPT/5/Engg/CI dt. 30.05.1996 was issued inviting applications for engagement of 100 casual labours in the Rayagada Sub-division of Engineering Department. Subsequently, the requirement was revised by the competent authority and the Rayagada Sub-division was authorized to engage only 80 casual labours, which was also notified to all concerned vide no.wpt/5/Engg/CI dt. 26.6.96 well before the selection was held between 9-07-1996 and 21.07.1996. It is the case of the applicants that they have not been communicated with the notification dated 26.6.1996 by virtue of which recruitment for filling up of 100 vacancies of casual labours was reduced to 80 vacancies.

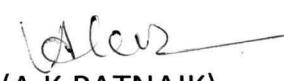


7. Law is well settled that creation and abolition of posts are within the prerogative of the executive. Since the authorities in the Railways decided to curtail the vacancy position from 100 to 80 having regard to the need of the hierarchy, they are well within their competency to do so. No notice in this regard need be issued as a measure of compliance of the principles of natural justice. It is not the case of the applicants that their candidatures were not at all considered. Rather, they having appeared at the selection test or physical test, as the case may be, ^{and} did not come out successful. It is also not the case of the applicants that any fraud or malpractice has been adopted in the matter of selection and appointment to the post in question. Viewed from this, no right accrues ^{to} ~~on~~ the applicants to either question the legality of reduction of number of vacancies from 100 to 80 or to be selected for appointment for the post in question as they did not come out successful in the selection test.

8. In view of the preceding paragraphs, we hold that the Respondent-Railways while advertising and inviting applications for filling up of 100 vacancies of casual labours were not at fault in reducing and making the selection against 80 vacancies and having not noticed the applicants on this score, they have not violated the principles of natural justice.

9. Having regard to what has been discussed above, we hold that the applicants have not been able to establish their case in support of the relief sought. In the result, the O.A. is dismissed. No costs.

(R.C.MISRA) 
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)